



Preparing Transition-Age Youth with Disabilities for Work: What School Leaders Need to Know About the New Legal Landscape

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This policy brief is intended to inform school leaders about their responsibilities under recent case law to prepare youth with disabilities for work and careers. It may also be helpful to students, families, vocational rehabilitation and developmental disability agency personnel, and community rehabilitation providers.

In recent years, the landscape of law and policy regarding transition from school to postschool life for students with disabilities has changed in significant ways. These changes have come not through traditional legal avenues like the Individuals with Disabilities Education Act (IDEA), but through important legal developments in the enforcement of the Americans with Disabilities Act (ADA), the Supreme Court's decision in *Olmstead v. L.C.*, and the Workforce Innovation and Opportunity Act.

School Transition Programs and "Train Then Place" Models

Many students with disabilities leave secondary school each year having secured neither employment nor placement in postsecondary education. In fact, despite significant advancements in the civil rights of students with disabilities over the past three decades, there remains a startling disparity between the postsecondary outcomes of students with and without disabilities (Sanford et al., 2011). Moreover, a significant number of students with disabilities leave school and directly enter segregated institutions, including sheltered workshops and day programs. In these institutions, they interact only with other people with disabilities and paid staff, and they often earn subminimum wages. Such outcomes raise the important question of whether schools bear responsibility for the efficacy of youth transition programs that pipeline such students from school directly to segregated institutionalized settings.

POLICY BRIEF

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IEL Institute for
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Leadership
Leading Across Boundaries

Recent legal developments have clarified that state and local governments, including their education agencies, may be liable under the ADA and *Olmstead* if they place students with disabilities at serious risk of unnecessary segregation in postsecondary settings.

Despite the enactment of the Workforce Innovation and Opportunity Act (WIOA) in 2014, which placed several new limitations on the use of subminimum wage employment for youth with disabilities, some schools continue to be officially licensed to employ students with disabilities at subminimum wages to engage in manual tasks. The U.S. Department of Labor currently licenses approximately 105 School Work Experience Programs nationwide. These certificates allow school programs to pay between approximately 3,000 and 7,000 student workers with disabilities subminimum wages for their labor under Section 14(c) of the Fair Labor Standards Act (United States Department of Labor, Wage and Hour Division, 2017). Students typically perform piece-rate jobs in School Work Experience Programs where, contrary to their non-disabled peers, they are paid based on their rate of production with no minimum floor on their wages. As a result, students can earn just pennies on the dollar fulfilling private contracts during the school day for outside companies.

Other students work in segregated adult sheltered workshops for one or more class periods per day, performing some of the same tasks as adults with disabilities. Many such students are ultimately placed as adults in the very sheltered workshops where they worked during school, without first having the opportunity to be informed about or try competitive integrated employment. In Missouri, for instance, the Department of Elementary and Secondary Education, and not the adult developmental disability agency, is the state agency that licenses and administers the adult sheltered workshop system, as a natural extension of its special education programs (Missouri Department of Elementary & Secondary Education, 2016).

I. WHY MANY SCHOOL TRANSITION PROGRAMS FAIL TO LEAD TO COMPETITIVE INTEGRATED EMPLOYMENT

a. They are often modeled upon, and prepare students for, sheltered workshops.

Historically, school transition programs that serve 14- to 21-year-old students with intellectual and developmental disabilities, autism, and other disabilities have relied on “work readiness” and “pre-vocational” skills training models to help students plan for their postsecondary employment goals. Such transition models bear no causal relationship to, or even substantial track record of, assisting students with obtaining competitive integrated employment. Pre-vocational training models adhere to the principle that students with disabilities should be trained first and demonstrate proficiency in various tasks before they are placed into competitive integrated employment.

To this end, many students with disabilities perform manual, and sometimes menial, tasks alongside only other students with disabilities, often to fulfill the contractual demands of an outside business or the school itself as part of the transition curriculum. Students typically perform this work without compensation or for subminimum wages. Such programs thus model, and prepare students for, the adult sheltered workshops that many of them will transition to after exiting school. In these workshops, workers with disabilities continue to be segregated from non-disabled peers and continue to receive subminimum wages for decades at a time. Having been designed upon the same model as sheltered workshops, should it surprise anyone that these programs lead students with disabilities to work in such workshops after they leave school?

b. They typically do not prepare students with disabilities for competitive integrated employment.

Students with disabilities typically engage in pre-vocational training at the precise

stage in their academic careers when their non-disabled peers are participating in paid work experiences, internships, and mentorship programs in the community with real-world employers.

Contrasting the transition experiences of non-disabled students with those provided to students with disabilities illustrates the deficiencies of the pre-vocational transition approach.

c. They often do not give students with disabilities marketable skills.

Nationally, many transition-age students with intellectual, developmental, or significant disabilities perform routine “training” tasks during the school day in classrooms, on school campuses, or in adult sheltered workshops. These tasks include sorting, shredding, folding, recycling, serving food, cleaning, maintaining flower beds, doing laundry, and handling trash with mostly only other students with disabilities. Students who perform pre-vocational tasks as part of transition often do not have access to updated machinery, equipment, or technology to perform such tasks. These tasks typically do not correspond to learning a marketable skill. In addition, students do not progress to new skills or responsibilities, but continue to “practice” these routine tasks long after they have mastered a skill.

d. At times, they segregate, stigmatize, and set low expectations.

Participation in such programs can often be stigmatizing, and even counter-productive, for students with disabilities. Students in these programs are segregated from their peers, taken out of educational programs and general education curricula, and placed on an altogether separate track, often not even resulting in an option for a high school diploma or a “special” limited diploma or certificate. Furthermore, in many school districts across the country, students with disabilities perform pre-vocational tasks for the direct benefit of students without disabilities, like cleaning

up cafeteria tables after non-disabled students’ lunch breaks or taking out school trash. This creates an unequal or subservient relationship that is likely to shape attitudes and expectations in adult life for both students with and without disabilities.

e. They often do not start early enough and are not individualized.

Transition planning for students with disabilities often begins in students’ final years of high school, through the Individualized Education Program (IEP) process, if at all. By contrast, their non-disabled peers are often cultivated from as early as elementary school to visualize, prepare for, and actually experience a wide range of employment and career options in the community before leaving school. Transition experiences, such as internships and paid work, and education programs, such as vocational or advanced placement classes, are then individualized or tailored to students’ interests and preferences. By contrast, employment-related transition plans for students with disabilities in pre-vocational training programs are often not individualized.

f. They frequently do not address students’ disabilities.

Pre-vocational transition programs for students with disabilities thus fail to use the tools available to students without disabilities to support school-to-work transition. However, they also fail to use the tools uniquely available to support students with disabilities. For example, students with disabilities in pre-vocational programs typically are not given reasonable accommodations or assistive technology to allow them to succeed. In fact, in many states, students with disabilities lack access to federally-subsidized vocational rehabilitation counselors and caseworkers from the general disability service system. Therefore, such students are never evaluated or assessed to receive integrated supported employment services prior to school exit.

Informed Choice, Competitive Integrated Employment, and “Place Then Train” Models

Students with disabilities across the country often face the difficult task of identifying their employment preferences in settings where they are isolated from non-disabled co-workers, customers, and peers, lack adequate supports and accommodations, and work in exchange for little or no compensation. Without prior participation in integrated employment, many students exit school transition programs with exceedingly low expectations of themselves and their employment skills and no realistic assessment of whether, with the right supports, competitive integrated employment is attainable.

Thirty years of research in the field of supported employment services, however, has firmly established that even individuals with the most severe disabilities can work in competitive integrated employment (Office of Disability Employment Policy [ODEP], n.d.). It is widely recognized in the field of supported employment that the most effective method to drive successful integrated employment outcomes is for individuals with disabilities to be placed first in competitive integrated employment and provided with the individualized training, services, supports, and accommodations necessary to succeed in that environment. Research also firmly supports that paid work while in high school is a key predictor of a student’s likelihood of obtaining competitive integrated employment after leaving school (Carter, Austin, & Trainor, 2012). By contrast, participation in pre-vocational training is not (Carter et al., 2012). Students who have worked in integrated settings while in school have a benchmark for, and understanding of, working in a typical workplace. They also have had a greater chance to identify their own preferences, interests, abilities, and needs, and they have the information that they need to make meaningful and informed choices about working in postsecondary employment.

Over the past few decades, several transition models have emerged and demonstrated

higher postsecondary employment outcomes as a result of their reliance on paid work in integrated settings while students are in secondary school. Examples of such models include Seamless Transition, The Guideposts for Success, Project SEARCH, and intensive paid internships. In addition to the prevalence of paid work, these programs demonstrate adherence to current professional standards in the field of transition including, among other things, person-centered career and transition assessment approaches in integrated settings, participation in supported and customized employment services, and qualified and trained school personnel. They also demonstrate adherence to professional standards in career development strategies, like career awareness, exploration, and development and, importantly, interagency collaboration between vocational rehabilitation and developmental disability service agencies.

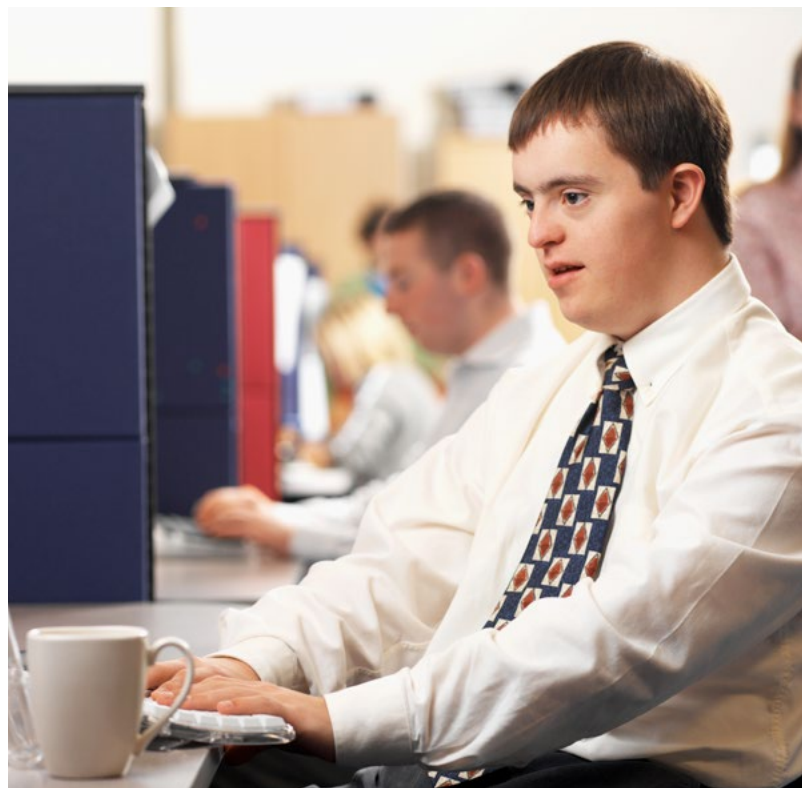
The ADA and *Olmstead v. L.C.*

The ADA requires public entities to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. ADA regulations explain that “[t]he most integrated setting” is one that “enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible...” (Americans with Disabilities Act, 1990). In 1999, through *Olmstead v. L.C.*, the United States Supreme Court held that Title II of the ADA prohibits the unjustified segregation of people with disabilities in the following instances: when community-based services are appropriate; when the affected persons do not oppose community-based services; and where they can be reasonably accommodated, taking into account the resources available to the entity and the needs of others who receive disability services from the entity (*Olmstead v. L.C.*, 1999). Therefore, schools and education agencies that unnecessarily segregate students with disabilities in their pre-vocational transition programs may be liable under the ADA for discrimination.

The *Olmstead* decision also explained that individuals do not need to wait until the harm of unjustified segregation occurs to receive the protections of the ADA and that it violates the statute to place people with disabilities at serious risk of unnecessary segregation, including in employment settings (*Olmstead v. L.C.*, 1999). In recent years, the Department of Justice (DOJ), the agency designated by Congress to enforce the ADA, has clarified that the ADA and *Olmstead* apply to youth transition services. For example, a state or local education agency may be liable for the failure to make available transition services and supports, including caseworkers and school transition specialists. Moreover, state or local education agencies may be liable for the failure to collaborate and coordinate with vocational rehabilitation agencies to promote the use of vocational rehabilitation counselors, which allow students with disabilities to prepare for and transition to competitive integrated employment.

State and local education agencies may place students at serious risk of unnecessary segregation by failing to allow students with disabilities to make informed choices about working in competitive integrated employment prior to being referred for admission to segregated sheltered workshops. The failure to support informed choices may include the lack of timely transition services, which allow students with disabilities to understand and experience the benefits of work in an integrated setting prior to school exit. Other factors relevant to the risk analysis include whether a school, as part of the school curriculum, trains students with disabilities in tasks similar to those performed in sheltered workshops; encourages students with disabilities to participate in sheltered workshops; and/or routinely refers students to sheltered workshops as a postsecondary placement without offering such students opportunities to experience integrated employment.

Significantly, the Department of Justice has been involved in three federal court cases brought under Title II of the ADA and *Olmstead* that alleged that public entities



violated the rights of students with disabilities by placing them at serious risk of segregation. In [United States v. Rhode Island and the City of Providence \(2013\)](#), the DOJ found that Rhode Island and the Providence Public School District violated Title II of the ADA and *Olmstead* when 85 students with intellectual and developmental disabilities were placed at serious risk of entering adult sheltered workshops. The case resulted in a court-ordered settlement agreement between the parties. The 85 students had participated in an in-school sheltered workshop as part of the school's transition program. In this workshop, they were cultivated, trained, and prepared to perform sheltered workshop tasks, and the work that they performed was similar to the work performed by a nearby adult sheltered workshop. Many of the program's students were eventually referred to that same nearby adult sheltered workshop program in a direct pipeline to segregation. Students in the in-school sheltered workshop worked for one or two 55-minute periods per school day



and were paid between 50 cents and \$2.00 per hour, no matter what job they performed or how productive they were. Few, if any, opportunities existed for these students to try or participate in competitive integrated employment prior to leaving school.

The following year, in 2014, the DOJ resolved its statewide investigation of Rhode Island's day activity service system through a consent decree in [United States v. Rhode Island](#) (2014). The investigation found that the state, including its state education agency (SEA), had placed hundreds of students with disabilities at serious risk of unnecessary segregation in sheltered workshops and day programs. Specifically, the DOJ found that, among youth with intellectual and/or developmental disabilities who transitioned out of Rhode Island secondary schools between 2010 and 2012, only about five percent transitioned into jobs in integrated settings, even though many more of these youth were able to work in integrated employment and were not opposed to doing so. Among other things, the United States alleged that Rhode Island had failed to ensure that the SEA set standards for school districts about the timely introduction and

coordination of transition services, including access to the vocational rehabilitation and developmental disability service systems, as well as opportunities to experience work in integrated settings prior to school exit.

As a result of these 2013 and 2014 settlements, the Providence Public School District became the first local education agency (LEA) in the country to adopt an Employment First policy, making work in integrated employment settings a priority service option for youth who can and want to work after leaving school. Moreover, Rhode Island state agencies, including the SEA, vocational rehabilitation, and developmental disability agencies, have committed to the implementation of a concrete school-to-work transition planning process for all youth between the ages of 14 and 21. As part of that process, transition planning efforts begin at age 14, through which transition-age youth receive vocational and situational assessments, trial work experiences in integrated settings, and an array of individualized services during each year of secondary school. The trial work experiences provide students with the opportunity for integrated work-based learning experiences outside of the school setting. These work-based learning experiences are based on person-centered planning, where the placements are individually tailored to a given student in typical places of employment. All this is designed to ensure that these students have meaningful opportunities to work in competitive integrated employment after leaving school. Under the statewide Rhode Island Consent Decree, over 1,000 youth ages 18-21 are guaranteed evidence-based transition services provided in integrated settings. Moreover, evidence-based transition models like Project Search have been adopted in Rhode Island and have proven to be effective.

In 2015, the DOJ and private plaintiffs entered into a consent decree to resolve litigation with the State of Oregon pertaining to its statewide employment service system for people with disabilities. In [Lane v. Brown/](#)

[*United States v. Oregon*](#) (2015), the DOJ found that Oregon, including its SEA, had placed hundreds of students each year at serious risk of unnecessary segregation in sheltered workshops. Specifically, the United States found that Oregon failed to establish the presence and availability of caseworkers, vocational rehabilitation counselors, and other supports in Oregon's secondary school system necessary to assist youth in transition with the formulation of career-related goals that include integrated employment. The DOJ also found that Oregon had no formal plan to transition students to competitive integrated employment and that the agreement between its SEA and vocational rehabilitation program had been ineffective because it lacked specific actions or benchmarks. As a result of this failure to provide effective transition planning and services, referral to a sheltered workshop was the most common outcome for students with disabilities upon leaving school in Oregon. In some cases, like in Rhode Island, Oregon students with intellectual and/or developmental disabilities were even prepared for the tasks typically performed in sheltered workshops; this was demonstrated by students performing mock-sheltered workshop activities in school or participating in adult sheltered workshops as part of the curriculum.

Many changes have taken place in Oregon since the initiation of the sheltered workshop litigation. In 2015, Oregon publicly committed to stop purchasing or funding sheltered workshop placements for youth in transition, becoming one of the first states in the country to do so. Moreover, the Oregon SEA supported, and the State Board of Education adopted, a rule that prohibits LEAs from including sheltered workshops on the continuum of alternative placements and supplementary aids and services provided to students with disabilities, a rule likely to be replicated by states across the country (Oregon Department of Education, 2013). Since the 2015 settlement, Oregon has established a statewide Transition Technical Assistance Network run by the SEA. Through the Transition Technical Assistance Network,

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transition network facilitators are positioned throughout the state to promote the statewide coordination of employment-related transition planning efforts.

Under the settlement agreement, over six years, Oregon will ensure that at least 4,900 youth ages 14 to 24 years old will be provided with the individualized transition services necessary for them to obtain competitive integrated employment. At least half of those youth will receive an Individual Plan for Employment through the vocational rehabilitation system. Importantly, "mock-sheltered workshop activities" and pre-vocational/transition activities are prohibited during the school day. The state is also calling on Oregon school districts to expand models of evidence-based transition practices (e.g., the Seamless Transition Model, Project Search, Youth Transition Program) to achieve competitive integrated employment for students with disabilities.

Department of Justice Guidance

In 2016, the DOJ issued guidance explaining that youth with disabilities who are at serious risk of unnecessary segregation in sheltered workshops are protected by the ADA and *Olmstead* and that public entities, including state and local education agencies, may be

held accountable for creating that risk (United States Department of Justice [DOJ], 2016, available at https://inclusivity.consulting/wp-content/uploads/2017/12/olmstead_guidance_employment.pdf). For example, the 2016 Guidance detailed how a state or local education agency may be liable for failing to make transition services and supports available to students with disabilities and failing to work with vocational rehabilitation agencies to help such students prepare for competitive integrated employment.

On December 20, 2017, the Justice Department rescinded the guidance. This rescission, however, has no impact on the force and effect of the already established law on the subject. In rescinding the guidance, the Justice Department noted on its website that the withdrawal “does not change the legal responsibilities of State and local governments under [T]itle II of the ADA, as reflected in the ADA, its implementing regulations, and other binding legal requirements and judicial precedent, including the U.S. Supreme Court’s *Olmstead* decision.” More specifically, the guidance’s withdrawal did not eliminate the applicability of the ADA’s integration mandate, the Supreme Court’s decision in *Olmstead v. L.C.*, court rulings including in *Lane v. Kitzhaber* (*Lane v. Brown*)/ *United States v. Oregon*, or the Department of Justice’s Letters of Finding and Consent Decrees to employment services.

Section 511 WIOA

As mentioned, WIOA places several new limitations on the payment of subminimum wages to youth with disabilities that are consistent with and complementary to the requirements of the ADA and *Olmstead* as applied to employment service systems. Among them is the requirement that, before beginning subminimum wage employment, under Section 511(a) of WIOA, a youth 24 years old or younger must first receive pre-employment transition services. These pre-employment transition services can include job exploration counseling, integrated work-based learning experiences, opportunities

for enrollment in postsecondary educational programs at institutions of higher education, social skills and independent living training, and self-advocacy training (Workforce Innovation and Opportunity Act [WIOA], 2014).

Moreover, youth must meet the following criteria before they can begin subminimum wage employment:

- They must have applied for and been found eligible or ineligible for vocational rehabilitation services;
- They must have been on an Individual Plan for Employment with appropriate services, such as supported employment services, for a reasonable period of time without success; and
- Their vocational rehabilitation case must be closed (WIOA, 2014).

Also, prior to being paid subminimum wages, the youth must be provided career counseling, information and referrals to federal, state, and other programs, and resources to obtain competitive integrated employment (WIOA, 2014).

Importantly, under Section 511(b)(2), WIOA prohibits any SEA or LEA from entering into “a contract or other arrangement with an entity that holds a 14(c) certificate for the purpose of operating a program for an individual who is age 24 or younger under which work is compensated at a subminimum wage” (WIOA, 2014). SEAs and LEAs can no longer contract with segregated sheltered workshops for youth to participate in employment-related transition programs. The vigorous enforcement of WIOA Section 511, including Sections 511(a) and (b), is necessary to ensure that students with disabilities are able to access pathways to competitive integrated employment. The U.S. Departments of Education and Labor as well as others must demonstrate robust active enforcement efforts for the promise of WIOA to be fully realized.

Conclusion

It is important that public entities, including state and local education, vocational rehabilitation, and developmental disability agencies, understand the changing legal landscape pertaining to transition services for students with disabilities. More than thirty years of research provides a concrete playbook for how to mitigate, if not eliminate, the risk of unnecessary segregation. Students must be provided with the individualized transition services and supports they need in order to experience work in competitive integrated employment prior to exiting school. For instance, the WIOA statute and regulations and *Olmstead* case law, letters of finding, and consent decrees make clear that state and local governments that have traditionally relied on segregated work settings for transition should take affirmative steps to ensure that students have a meaningful opportunity to make an informed choice to work in integrated employment settings after leaving school.

Such affirmative efforts may include the following:

- Providing information about the benefits of working in competitive integrated employment;
- Providing vocational and situational assessments, career development planning, and discovery in integrated employment settings;
- Arranging peer-to-peer mentoring; facilitating visits; providing opportunities for work-based learning experiences in integrated job settings; and
- Providing benefits counseling and planning to explain the impact of competitive work on an individual's public benefits.

More than thirty years of research provides a concrete playbook for how to mitigate, if not eliminate, the risk of unnecessary segregation. Students must be provided with the individualized transition services and supports they need in order to experience work in competitive integrated employment prior to exiting school.

Moreover, under Section 511 of WIOA, youth with disabilities are required to receive many of these same vital services before they are allowed to work in subminimum wage employment. Given these requirements, most, if not all, 14(c) licensed School Work Experience Programs must be critically reviewed for compliance with the ADA, *Olmstead*, and WIOA. Now is the time for state and local governments to advance these practices and boost students with disabilities into the mainstream of the economy.

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